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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA

14 v.

15 JOSEPH J. GIRAUDO,
16 RAYMOND A. GRINSELL,
KEVIN B. CULLINANE,
17 JAMES F. APPENRODT, and
18 ABRAHAM S. FARAG,
Defendants.
19

**GOVERNMENT'S RESPONSE TO
DEFENDANTS' *EX PARTE* STATUS
REPORT**

No. CR 14-00534 CRB

20
21 The government files this response to the last-minute, *ex parte* status report regarding
22 discovery, filed by the defendants with this Court at 5:20 p.m. today. The government began
23 producing discovery materials in December 2014, and completed the overwhelming majority of
24 its production by March 2015.¹ While the discovery is extensive, the government has made
25 significant efforts to organize and streamline the materials to aid the defendants in their review
26 and preparation for trial. The government has provided detailed indices with its productions, and

27
28 ¹ The government made several small supplemental productions between March 2015 and May 2015, when it
completed its discovery obligations required Federal Rule of Criminal Procedure 16.

1 has produced the materials in formats that are searchable and can be viewed in any commercial
2 document review software. It has also agreed to both of the requests it received for voluntary
3 disclosures (one by defendant Grinsell and one by defendant Appenrodt). These disclosures go
4 well beyond the government's discovery obligations. The government voluntarily produced a
5 list of the audio recordings it intends to draw from for its case-in-chief, identifying each by date,
6 county, and identifying any defendant who appeared. The government has also voluntarily
7 disclosed a list of the properties subject to the fraud and bid-rigging conspiracies alleged in the
8 Indictment. These disclosures greatly narrow the scope of evidence produced to the defendants
9 that the government intends to draw from at trial.

10 The government has not received requests for supplemental information, or further
11 disclosures related to the discovery, from any of the other defendants. The government
12 nonetheless remains willing to work with the defendants to prepare this case for trial. To that
13 end, at the government's suggestion, the parties have tentatively agreed to meet and confer on
14 discovery in the coming weeks.

15 Status of Discovery

- 16 • In December 2014, the government produced to the defendants the covert audio-
17 video recordings made in this investigation. The recordings were produced in a
18 format that could be played in Windows Media or other commercial audio- and
19 video-viewing software. This discovery was accompanied by detailed indices
20 listing the date and county of each recording, allowing them to be easily cross-
21 referenced to the FBI 302 reports documenting the collusive activity captured on
22 the recordings. The government then voluntarily provided to all the defendants a
23 list of the 167 audio-video recordings (each between 30-60 minutes), segments
24 which the government intends to draw from in its case-in-chief. The list identifies
25 any defendant heard or seen in each recording.
- 26 • In January 2015, the government produced all of the materials seized pursuant to
27 the search warrants executed in this case. This discovery was accompanied by
28 indices listing the individual from whom the materials were seized. This
discovery was produced in a TIFF/Text format, allowing it to be loaded and

1 searched in any major document management software program.

- 2 • In March 2015, the government produced the subpoenaed and voluntarily-
3 produced documents obtained in this investigation, along with the FBI 302s,
4 interview write-ups, and FBI surveillance reports. The reports were all produced
5 in PDF format, allowing them to be key-word searched. The government also
6 produced an index listing the name and date of each interview. The subpoenaed
7 production included an index listing who produced the document. This discovery
8 was also produced in TIFF/Text format for easy loading and searching.
- 9 • In May 2015, at the request of defendant Grinsell, the government voluntarily
10 disclosed to all the defendants a list of properties it believes were subject to the
11 fraud and bid-rigging conspiracies - 313 properties in San Mateo and 92
12 properties in San Francisco.

13 The government has completed its Fed. R. Crim. Pro 16 discovery. It will continue to
14 meet its obligations under the Jencks Act, *Brady v. Maryland*, and *Giglio v. United States*.

15 Next Hearing

16 The government does not oppose the defendants' request to schedule the next hearing in
17 this matter for September 9, 2015. The government respectfully asks, however, that any
18 discovery disputes that the parties cannot resolve be referred to a magistrate and resolved *prior*
19 *to* the hearing date so that the parties can be prepared set a motions schedule on Sept. 9. This
20 would include a motion to dismiss, which is the proper vehicle for the defendants to challenge
21 the sufficiency of the government's Indictment, particularly as it relates to the fraud charges.

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23 Respectfully Submitted,

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25 Dated: June 9, 2015

26 _____
27 /s/
28 DAVID WARD
LIDIA MAHER
ANDREW NICHOLSON-MEADE
Trial Attorneys
Antitrust Division
United States Department of Justice

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